

1 John V. Picone III, Bar No. 187226
jpicone@hopkinscarley.com
2 Jennifer S. Coleman, Bar No. 213210
jcoleman@hopkinscarley.com
3 Aleksandr Korzh, Bar No. 286613
akorzh@hopkinscarley.com
4 HOPKINS & CARLEY
A Law Corporation
5 The Letitia Building
70 South First Street
6 San Jose, CA 95113-2406

7 *mailing address:*

P.O. Box 1469
8 San Jose, CA 95109-1469
Telephone: (408) 286-9800
9 Facsimile: (408) 998-4790

10 Thomas S. Biemer (*Pro Hac Vice*)
tbiemer@dilworthlaw.com
11 John J. Higson (*Pro Hac Vice*)
jhigson@dilworthlaw.com
12 Joshua Wolson (*Pro Hac Vice*)
jwolson@dilworthlaw.com
13 Dilworth Paxson LLP
1500 Market Street, Suite 3500E
14 Philadelphia, PA 19102
Telephone: (215) 575-7000
15 Facsimile: (215) 575-7200

16 Attorneys for Plaintiffs
17 IXI MOBILE (R&D) LTD. and IXI IP, LLC

18 *Additional counsel in signature block*

19 UNITED STATES DISTRICT COURT

20 NORTHERN DISTRICT OF CALIFORNIA

21 IXI MOBILE (R&D) LTD. and IXI IP,
22 LLC,

23 Plaintiffs,

24 v.

25 SAMSUNG ELECTRONICS CO., et al.,

26 Defendants.
27
28

CASE NO. 3:15-CV-03752-HSG

IXI MOBILE (R&D) LTD. and IXI IP,
LLC,

Plaintiffs,

v.

BLACKBERRY CORPORATION, et al.,

Defendants.

CASE NO. 3:15-CV-03754-HSG
(RELATED CASE)

IXI MOBILE (R&D) LTD. and IXI IP,
LLC,

Plaintiffs,

v.

APPLE INC.

Defendant.

CASE NO. 4:15-CV-03755-HSG
(RELATED CASE)

JOINT CASE MANAGEMENT STATEMENT

Pursuant to this Court's Case Management Conference Order In Reassigned Cases, Plaintiffs IXI Mobile (R&D) Ltd. and IXI IP, LLC (collectively "IXI" or "Plaintiffs"), Defendants Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (hereinafter "Samsung"), Defendants BlackBerry Limited and BlackBerry Corporation (hereinafter "BlackBerry"), and Defendant Apple Inc. (hereinafter "Apple") (collectively "Defendants") submit this Joint Case Management Statement and [Proposed] Order.

1. Jurisdiction and Service:

This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 101 et seq., and the Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) and the Declaratory Judgment Act, 28 U.S.C. § 2201, et seq. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b). This matter was transferred to the above-captioned Court pursuant to the Order dated August 6, 2015 granting Defendants' Motion to Transfer Venue to Northern District of California (Dkt. No. 79).¹ All parties have appeared.

2. Facts:

This is a patent case, involving infringement assertions by IXI under U.S. Patent Nos.

¹ For simplicity, all referenced docket numbers are to the docket in the *IXI v. Samsung* case. 626\1260597.4

1 7,016,648; 7,039,033; and 7,295,532 (collectively the “Patents-in-Suit”); against products made
 2 by Samsung, BlackBerry, and Apple.

3 IXI filed complaints against Samsung on June 17, 2014, BlackBerry on June 18, 2014,
 4 and Apple on October 2, 2014, each in the Southern District of New York. Samsung and
 5 BlackBerry filed answers and counterclaims on September 26, 2014; Apple filed its answer on
 6 November 24, 2014.

7 IXI, Samsung, BlackBerry, and Apple submitted an agreed-upon case management
 8 schedule which was approved by the S.D.N.Y. and that included the completion of claim
 9 construction briefing by August 14, 2015 and fact discovery by November 10, 2015. On January
 10 20, 2015, IXI served its disclosure of Asserted Claims and Infringement Contentions upon
 11 Samsung, BlackBerry, and Apple, on March 9, 2015 Defendants served their Invalidity
 12 Contentions; IXI and Defendants have each subsequently served amended contentions. The
 13 parties submitted a Joint Claim Terms Chart on June 8, 2015 and IXI filed its opening claim
 14 construction brief on July 8, 2015. The cases were transferred to the N.D. Cal. on August 6,
 15 2015, before the Defendants’ opposition claim construction brief was filed.

16 On June 18 and 19, 2015, Samsung and Apple filed *Inter Partes Review* petitions
 17 challenging the validity of the asserted claims in the three Patents-in-Suit. IXI filed its responses
 18 to those petitions on October 2, 2015. The PTAB is expected to issue decisions on these petitions
 19 no later than January 2, 2016.

20 **3. Legal Issues:**

21 The parties have identified the following principal remaining disputed issues:

- 22 A. Whether or not Defendants have infringed and continue to infringe the Patents-
 23 in-Suit;
- 24 B. Whether or not the Patents-in-Suit are valid and enforceable;
- 25 C. Whether or not Defendants should be preliminarily and permanently restrained
 26 and enjoined from infringing the Patents-in-Suit;
- 27 D. Whether this action is an exceptional case for awarding attorneys’ fees under
 28 35 U.S.C. §285.

1 **4. Motions:**

2 There is one motion currently pending before the Court:

3 (1) Defendants' Motion to Stay Pending Inter Partes Review. As Defendants set
4 forth below, they believe that many of the typical CMC issues, such as discovery
5 and case schedule, would be best addressed following the Court's decision on the
6 Motion to Stay.

7 **5. Amendment of Pleadings:**

8 The parties agree that no additional parties may be joined except with leave of the Court
9 and that amended pleadings may not be filed except with leave of the Court.

10 **6. Evidence Preservation:**

11 Each of the parties have reviewed the ESI Guidelines and each of the parties believes that
12 it has taken appropriate and reasonable measures to preserve evidence relevant to a party's claims
13 and defenses in this matter.

14 **7. Disclosures:**

15 Each party served initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1)(A) by January
16 2015.

17 **8. Discovery:**

18 The Case Management Plan and Scheduling Order entered by the S.D.N.Y. called for the
19 completion of fact discovery by November 10, 2015. The parties began the exchange of written
20 discovery in October, 2014 and have propounded and responded to document discovery,
21 including various document and source code productions, and to multiple sets of written
22 discovery. The parties have also held various meet and confers regarding alleged deficiencies in
23 document productions and written discovery. IXI and Apple have served several third-party
24 subpoenas requesting documents and depositions, and various third-party productions have been
25 made. Beginning in May, 2015, IXI began the process of reviewing source code for each of the
26 Defendants, that process is ongoing. Defendants deposed one of the inventors of the Patents-in-
27 Suit in July 2015 and, for claim construction purposes, deposed IXI's expert, also in July 2015.
28 IXI has served each Defendant with a Notice of Deposition pursuant to Federal Rule 30(b)(6),

1 each of which awaits final scheduling. The parties have continued to meet and confer on open
2 discovery issues. However, given the Defendants' pending Motion to Stay Pending Inter Partes
3 Review, the Defendants believe that discussion of a schedule for further discovery would be
4 fruitful following resolution of that motion.

5 The parties negotiated a Protective Order that was entered by the Court in the S.D.N.Y.
6 (Dkt. Nos. 60, 61) and which is still in effect in this case. That Protective Order contains certain
7 limitations regarding the number of pages of source code IXI is permitted to print from its review.
8 In August, 2015, Samsung informed IXI that it was an appropriate time for IXI to amend its
9 Infringement Contentions with source code citations. IXI has advised that, where appropriate, it
10 will amend its contentions with source code citations after its review has been completed. IXI
11 also requested that Samsung agree to an expansion of the printed page limitations contained in the
12 Protective Order in order to do so. IXI and Samsung do not have an agreement on this issue at
13 this time.

14 **A. Limits on Discovery:**

15 The parties previously agreed that IXI is limited to seventy (70) hours of deposition of fact
16 witnesses of Samsung, seventy (70) hours of deposition of fact witnesses of BlackBerry, and (70)
17 hours of deposition of fact witnesses of Apple. Samsung, BlackBerry, and Apple are limited to
18 seventy (70) hours each of deposition of fact witnesses of IXI. Samsung, BlackBerry, and Apple
19 shall make reasonable efforts to conduct their depositions of IXI witnesses jointly to the extent
20 practical. In no event shall any deposition count as less than three (3) hours toward a party's total
21 deposition hours. The parties intend to take depositions of expert witnesses and third party
22 witnesses, which shall not be included in the 70 hour limits.

23 **B. Production of ESI:**

24 The parties have met and conferred multiple times and have negotiated a nearly complete
25 protocol for ESI production. Once complete, the parties will submit it to the Court for review and
26 approval.

27 **9. Class Actions:**

28 These matters are not class actions.

10. Related Cases:

Each of the three above-captioned cases has been accepted as related.

11. Relief:

IXI seeks: 1) a judgment that the Defendants have infringed one or more claims of the Patents-in-Suit pursuant to 35 U.S.C. §§ 271(a), 271(b), and/or 271(c); and 2) a judgment declaring that continuing manufacture, use, offer for sale, sale, and/or importation of accused products, or inducement of or contribution to such conduct, by Defendants would constitute infringement of one or more claims of the Patents-in-Suit pursuant to 35 U.S.C. §§ 271(a), 271(b), and/or 271(c). IXI seeks monetary damages in amount no less than a reasonable royalty. IXI's computation of damages is subject to further analysis and likely expert testimony. IXI believes that damages discovery can take place in conjunction with fact discovery.

The Defendants deny liability for infringement of the Patents-in-Suit and deny that any of the Defendants' products infringe the Patents-in-Suit. The Defendants believe that each asserted claim of the Patents-in-Suit is invalid. The Defendants also believe that this is an exceptional case and seek their attorneys' fees, costs, and expenses incurred in these actions.

12. Settlement and ADR:

The parties have requested an Early Settlement Conference with a Magistrate Judge.

13. Consent to Magistrate:

All parties do not consent to disposition of this case by a Magistrate Judge.

14. Other References:

The parties do not believe that this case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues:

These matters originally involved an additional patent, U.S. Patent No. 7,426,398. In May, 2015, IXI stipulated to the dismissal of all claims related to U.S. Patent No. 7,426,398. The parties will continue to explore potential ways to narrow the issues during the litigation.

16. Expedited Trial Procedures:

This matter is not the type of case that that can be handled under the Expedited Trial

Procedure of General Order No. 64 Attachment A.

17. Scheduling:

Plaintiffs' Position: IXI proposes the schedule described below.

Defendants' Position: The Defendants believe that discussion of a schedule for further discovery and briefing would be fruitful following resolution of the Defendants' Motion to Stay Pending Inter Partes Review. In the event that the Defendants' Motion to Stay is granted, the Defendants propose holding a Case Management Conference 30 days after the stay is lifted (the "Post-Stay CMC") in order to determine a schedule that is then appropriate. Should the Court deny the Defendants' Motion to Stay, the Defendants propose the schedule described below.

Event	IXI's Proposed Deadline	Defendants' Proposed Deadline
Deadline to comply with Northern District Civil L.R. 16-8 and ADR L.R. 3-5	Completed	Completed
Deadline to comply with Northern District Patent L.R. 3-1	November 6, 2015 (to conform to Northern District Patent L.R. 3-1). IXI will supplement its Infringement Contentions with citations to source code, where appropriate, at a time after its review of Defendants' source code is complete.	November 6, 2015 (to conform to Northern District Patent L.R. 3-1). November 19, 2015 to fully comply with Northern District Patent L.R. 3-1, including source code citations. IXI has already had roughly six months to review Defendants' source code and should therefore include citations to source code in its Rule 3-1 infringement contentions.
Deadline to comply with Northern District Patent L.R. 3-3.	November 13, 2015	January 18, 2016
IXI's opening claim construction brief and any expert declaration in support	November 6, 2015 ²	January 11, 2015, or 15 days after a Post-Stay CMC, whichever is later.

² As stated above, IXI filed its opening claim construction brief in the S.D.N.Y. on July 8, 2015. Given the subsequent transfer from the S.D.N.Y., IXI intends to replace citations to cases in the S.D.N.Y. in its previously-filed brief with citations to cases in the N.D. Cal., but will not substantively modify its arguments or positions. The

Event	IXI's Proposed Deadline	Defendants' Proposed Deadline
Defendants' opposing claim construction brief, (Patent L.R. 4-5(b)) and any expert declaration in support	November 20, 2015	January 25, 2016, or 30 days after a Post-Stay CMC, whichever is later.
IXI's reply claim construction brief (Patent L.R. 4-5(c)).	December 11, 2015, including any supplemental expert declaration in support (with Defendants' expert deposition to be completed by December 4, 2015).	February 8, 2016, or 14 days after the filing of Defendants' opposing claim construction brief, whichever is later.
Technology Tutorial and Claim Construction Hearing	In January 2016, at a time convenient for the Court.	In March 2016, at a time convenient for the Court.
Close of fact discovery	April 15, 2016, or 30 days after the entry of a Claim Construction Order, whichever is later.	
Deadline to file discovery motions relating to fact discovery	14 days after the close of fact discovery.	
Designation of opening experts with reports	45 days after claim construction ruling.	90 days after the close of fact discovery.
Designation of rebuttal experts with reports	45 days after initial expert reports.	
Close of expert discovery	45 days after rebuttal expert reports.	
Last day to file dispositive and <i>Daubert</i> motions	45 days after completion of expert discovery.	
Pre-trial disclosures (Fed. R. Civ. P. 26(a)(3)(B))	TBD	
Pre-trial objections (Fed. R. Civ. P. 26(a)(3)(B))	TBD	
Final pre-trial conference	TBD	
Trial	TBD	

18. Trial:

These cases, even though they are consolidated for pre-trial proceedings, will each be tried to separate juries. The parties have conferred and their present best estimate of the length of trial is: two to three weeks for each trial, depending on the length of the trial day.

parties have agreed to meet and confer prior to IXI re-filing its opening claim construction brief in the N.D. Cal. Subject to these qualifications, the Defendants do not oppose this request.

626\1260597.4

- 8 -

1 **19. Disclosure of Non-Party Interested Entities or Persons:**

2 The parties have filed their respective Corporate Disclosure Statements pursuant to
3 Federal Rule of Civil Procedure 7.1(a) and their Certificates of Interested Parties and Entities
4 pursuant to Civil Local Rule 3-15.

5 **20. Other Issues**

6 The parties do not believe that any other issues are appropriate for inclusion in this Joint
7 Case Management Statement and [Proposed] Order.

8 **21. Additional Information Pursuant to Patent Local Rule 2-1**

9 **A. Proposed Modifications to the Obligations or Deadlines Set Forth in**
10 **the Patent Local Rules.**

11 The parties' proposed schedule is set forth in Section 17 above.

12 **B. How the Parties Intend to Educate the Court on the Technology at**
13 **Issue.**

14 The parties propose educating the Court on the technology at issue through a tutorial as set
15 forth in the above proposed schedule. The parties propose that the Plaintiffs be allowed to make a
16 45 minute presentation, followed by a 45 minute presentation by the Defendants. The parties
17 propose that a Claim Construction Hearing follow the technology tutorial. IXI believes that the
18 Claim Construction Hearing will require approximately one day.

19 Dated: October 29, 2015

HOPKINS & CARLEY
A Law Corporation

21 By: /s/ John V. Picone III

22 John V. Picone III
23 Jennifer S. Coleman
24 Aleksandr Korzh
25 Attorneys for Plaintiffs
26 IXI MOBILE (R&D) LTD. and IXI IP, LLC

1 Dated: October 29, 2015

KIRKLAND & ELLIS LLP

2
3 By: /s/ Todd M. Friedman

4 Gregory S. Aravos, P.C.

Todd M. Friedman, P.C.

5 James E. Marina

Attorneys for Defendants

6 Samsung Electronics Co., Ltd., Samsung

Electronics America, Inc., and Samsung

7 Telecommunications America, LLC

8 Dated: October 29, 2015

MCGUIREWOODS LLP

9
10 By: /s/ Shaun W. Hassett

11 Jason W. Cook

Shaun W. Hassett

12 Franklin D. Kang

Attorneys for Defendants BlackBerry

Limited and BlackBerry Corporation

13 Dated: October 29, 2015

SIMPSON THACHER & BARTLETT

14
15 By: /s/ Gregory T. Chuebon

16 Harrison J. Frahn IV

Patrick E. King

17 Gregory T. Chuebon

Elizabeth A. Gillen

18 Attorneys for Defendant Apple Inc.